IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1855 of 2002
To
FIRST APPEAL No. 1856 of 2002
With
CIVIL APPLICATIONS NO. 6436 & 6437 OF 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GENERAL MANAGER,OIL & NATURAL GAS CORP.LTD. - Appellant(s)
Versus
STATE OF GUJARAT & 2 - Defendant(s)

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Appearance :

MR PRAKASH K JANI for Appellant(s) : 1,
MR UR BHATT, AGP for Defendant(s) : 1 -
MR MD VAKIL for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 15/03/2007

CAV COMMON JUDGMENT :

This group of First Appeals arises from common judgment and award dated 21/9/2001 made by 4th Joint Civil Judge [S.D.] Mehsana, in Land Acquisition Reference Case No. 622/1998 and Land Acquisition Reference Case No. 623/1998. Since these appeals involve common questions of fact as well as law, they are heard together and now they are being disposed of by this common CAV judgment.

2. The appellant – Oil and Natural Gas Corporation Ltd., has preferred these appeals to challenge the aforesaid award whereby the Ld. Judge has determined the compensation [annual rent] of the lands in question at Rs.3=80 paise per sq. mtr., per year i.e., additional compensation of Rs.2=90 paise per sq.mtr. The lands in question are situated at village Hebuva in Taluka and District Mehsana [hereinafter referred to as 'the land']. The respondents, other than respondents no. 1 and 2 i.e., State of Gujarat and Special Land Acquisition Officer, are the owners of the land [hereinafter referred to as 'the claimants']. It is agricultural land. Since the Project Manager, ONGC Project required the land for drilling oil wells and extracting oil, he submitted a proposal for temporary occupation of land. As it appeared to the appropriate Government that the land was needed for public purpose, the said proposal was accepted by it and in pursuance thereof, it exercised powers under section 35 of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act'] and directed the Collector to procure the occupation of the land. After complying

with all the necessary formalities, the Collector procured the occupation of the land. Present respondent no. 2 i.e., Special land Acquisition Officer, after complying with the necessary formalities, determined the rent of the land at Rs.90/- per Are per year. Since the claimants were totally dissatisfied with the rate of compensation i.e., rent fixed by respondent no. 2, they raised a dispute and the difference as to the sufficiency of compensation was referred to the Court for its decision under section 35 (3) of the Act. The proceedings, as stated above, were numbered as Land Acquisition Reference Case No. 622/1998 and Land Acquisition Reference Case No. 623/1998.

2.1. Before the Court, the claimants prayed for enhancement in the rate of compensation awarded by respondent no. 2. It was contended that the land was fertile and irrigated land and claimants obtained three crops in a year. It was connected with Taluka and District head quarters by roads. It was also contended that village Hebuva had facilities like water, electricity, bank, school, etc. It was the say of claimants that had they been cultivating the land, they would have earned more profit than the rent received by them at the rate determined by respondent no. 2. They averred that the principles of determining market value of the land were totally ignored by respondent no. 2, and the potentiality of the land, the sale transactions of the adjoining land, etc., were not taken into consideration. Respondents no. 1 and 2 and the appellants contested the claim of the claimants. According to them, the averments with

regard to fertility, irrigation facility, etc., were not true. They contended that the rate of compensation determined by respondent no. 2 was just and proper and it was not required to be enhanced.

2.2. During the course of hearing, the claimants examined Shambhubhai Shankerdas Patel at Exh. 15, who is claimant of Land Acquisition Reference Case No. 622/1998. He deposed on behalf of all other claimants also. Over and above the same, certain documentary evidence was produced including judgments delivered by the Court in other reference cases earlier. On the basis of the same, the Ld. Judge arrived at a conclusion that rate of compensation determined by respondent no. 2 at Rs.90/- per Are i.e., Rs.00-90 paise per sq.mtr., per annum was insufficient and enhanced it and granted Rs.3=80 paise per sq. mtr per annum i.e., Rs.2-90 paise per sq. mtr per annum as additional amount. The Court passed the operative order as under :

> "1. These land references are partly allowed.
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> 2. The applicants shall be entitled to get the amount of rent at the rate of Rs.3-80 ps per sq.mtr per year [an additional amount by way of rent at the rate of Rs.2-90 ps per sq.mtr.] with interest at the rate of 9% p.a., from the date of possession till its realization.
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> 3. The amount(s) already received by the claimants be adjusted from the payable amount(s).
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> 4. Each of the claimants is entitled to have 20% more compensation under the head of standing crops etc., over and above the compensation

awarded under this head by the learned Special Land Acquisition Officer.

5. The opponents shall also pay the proportionate costs and shall bear its own costs.

6. An award, in all the cases be drawn up accordingly.

7. The original Judgment is ordered to be kept in the record of LAR No. 622/98 and copy of this Judgment is ordered to be kept in L.A.R. No. 623/98."

Hence these appeals.

3. I have heard Mr. PK Jani, learned advocate appearing for the appellant, Mr. MD Vakil, learned advocate for the claimants and Mr. UR Bhatt, Ld. AGP for respondents no. 1 and 2. It is submitted by Mr. Jani that the Reference Court has not properly appreciated the material produced before it and has taken erroneous decision to enhance compensation. He has submitted that the oral evidence produced on behalf of the claimants was not reliable. He has further submitted that this is a case of temporary occupation under section 35 (1) of the Act and hence beyond the period of three years, the Collector has no jurisdiction to deal with the land under section 35. He has also submitted that the Court's decision covering the period subsequent to period of three years from the date of occupation is illegal and the Court has no authority to decide the compensation for such period.

3.1. As against that, Mr. MD Vakil has supported the judgment of the Reference Court.

4. I have carefully considered the submissions of the learned advocates. I have also carefully perused the record and proceedings of the case. It clearly appears that the land has been occupied by appellant for temporary period under section 35 of the Act. It is not a permanent acquisition. There is no dispute on that count. The only question is whether the rate of compensation determined by the Reference Court is on higher side and whether the Court has power to determine the rate of compensation even for period beyond three years from the date of occupation. So far as the facts which have been taken into consideration by the Reference Court to enhance the compensation are concerned, they are in form of oral as well as documentary evidence. The Court has adequately appreciated the oral deposition of Shambhubhai Shankerdas Patel at Exh. 15 wherein he has stated that the land was fertile land and they had irrigation facility. They obtained three crops round the year and earned substantial profit. According to him, the rate of compensation determined by respondent no. 2 was very low and it was required to be enhanced. He has been cross-examined by the otherside but nothing of any importance has been elicited from this witness. Over and above that, the claimants' documentary evidence has been taken into consideration by the Court. It comprises the

awards made by the Court earlier in L.A.R. Case No. 2420/1993 to L.A.R. Case No. 2424/1993 of village Sarangpur. The claimants have also produced awards made in L.A.R. Case No. 1394/1993 of village Jaydevpura and the awards made in L.A.R. Case No. 386/199 to L.A.R. Case No. 388/1999 in respect of lands at village Telavi at Exh. 20. The Ld. Judge has considered the evidence of Shambhubhai Shankerdas Patel in light of this documentary evidence and then it has assessed the compensation which could be awarded to the claimants. In respect of the lands of Telavi forming subject matter of L.A.R. Case No. 386/1999, it is found that the appellant is required to pay compensation at the rate of Rs.3=50 ps per sq.mtr per year. In view of the same the Court has determined Rs.3=80 ps per sq.mtr in the present case. It, therefore, appears that the conclusion drawn by the Reference Court is absolutely legal and proper and there is no reason to interfere with the same. Hence Mr. Jani's submission that the rate of compensation is on higher side cannot be accepted.

4.1. So far as the legal submission advanced by Mr. Jani with regard to the jurisdiction of the Civil Court to make award in respect of the period beyond three years from the date of occupation is concerned, such contention has neither been raised in the reference nor in the memorandum of appeal. However, it being question of law, I have allowed him to raise it at this stage. This submission of Mr. Jani is required to be accepted in view of the decision rendered by this Court in First Appeal No. 2568 of 1999 and its allied matters

dated 27/12/2006, wherein it is observed as under :-

> "10.1. Considering the provisions of Section 35 (1) of the Act, the occupant is not authorized to retain the possession of the land beyond the maximum period of three years, unless fresh procedure, as prescribed under Section 35 (2) is followed or parties have arrived at consensus for retention of the possession by the occupant beyond three years. So far as the facts of the case on hand are concerned, the possession of ONGC cannot be termed as unauthorized, illegal and wrongful because of the implied consent of the appellants. Since the Collector under Sections 35 and 36(1) of the Act is required to exercise power in relation to occupation of land for maximum period of three years, he cannot refer the difference as to the sufficiency of the compensation for the period subsequent to expiration of the term agreed upon by the parties or the maximum period of three years. The Court in its decision cannot cover any period subsequent to the expiration of the agreed term or three years. Such decision to that extent cannot be said to be legal and in accordance with the provisions of Chapter VI. It is immaterial whether the Reference is made within stipulated period or afterwards. Further when the Collector fails to act in accordance with the provisions of Section 36 (2) of the Act, on expiration of the maximum period of three years, the person interested in the land has to resort to remedy provided under common law, since the act is totally silent on this aspect. Even for claiming mesne profits in appropriate case, such person has to take recourse to remedy under common law when the possession of the land in question is stated to be unauthorized or wrongful. So far as the present case is concerned, in view of the fact that the possession is not unauthorized, the appellants are not entitled to receive any mesne profits. However, the appellants are entitled to have additional compensation for

> a period of three years commencing from the date of occupation at the rate of Rs.0.50 paise per sq. mtr. For the period beyond three years, if the appellants want additional compensation, they have to approach the Civil Court under common law as subsequent retention of possession is on account of consensus arrived at amongst the parties which is contractual arrangement and not under the Act. Of-course, if parties so intend, it is open for them to take the decision of the Court as a guideline or as basis for determining the rent for further period."

In view of the same, the award made by the Reference Court will be valid only for a period of three years from the date of occupation and not beyond that. These appeals are, therefore, partly allowed with no order as to costs.

In view of the above, Civil Applications do not survive and they are disposed of accordingly.

[Akshay H Mehta, J.]

* Pansala.